

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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**Commonwealth Edison Company**

**Petition for Statutory Approval of a  
Smart Grid Advanced Metering  
Infrastructure Deployment Plan  
Pursuant to Section 16-108.6 of the  
Public Utilities Act**

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**Docket No. 12-0298  
on Rehearing**

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**REDACTED POSITION STATEMENT OF THE STAFF OF THE ILLINOIS  
COMMERCE COMMISSION**

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Confidential Information Identified As

\*\*\*BEGIN CONFIDENTIAL\*\*\* XXXX \*\*\*END CONFIDENTIAL\*\*\*

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**REDACTED POSITION STATEMENT OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to the direction of the Administrative Law Judge ("ALJ") and Section 200 of the Illinois Administrative Code Rules of Practice (83 Ill. Adm. Code 200), respectfully submits its position statement in the above-captioned matter.

**I. INTRODUCTION**

On April 23, 2012, Commonwealth Edison Company ("ComEd" or "Company") filed its Verified Petition for approval of its Smart Grid Advanced Metering Infrastructure ("AMI") Deployment Plan ("AMI Plan"), pursuant to Section 16-108.6 of the Illinois Public Utilities Act ("Act"). The petitions to intervene of the following parties were granted in the matter: The People of the State of Illinois ("AG"), the Citizens Utility Board ("CUB"), the Environmental Law and Policy Center ("ELPC"), Comverge, Inc. ("Comverge"), AARP, the Illinois Power Agency ("IPA"), the City of Chicago ("City"), and the Building Owners and Managers Association of Chicago ("BOMA"). The Commission approved the AMI Plan with modifications ("Original Plan") on June 22, 2012. (Order, Docket No. 12-0298 at 64-65, June 22, 2012)

On July 6, 2012, ComEd filed a Verified Application for Rehearing ("Application for Rehearing") and supporting Affidavit of Joseph R. Trpik, Jr. ("Trpik affidavit") seeking rehearing on the issues of (1) the AMI Deployment schedule in light of the Commission's May 29, 2012 Order in the ComEd Formula Rate Docket No. 11-0721, (2) onsite contact prior to disconnection for nonpayment, and (3) metrics related to vulnerable populations. (Application for Rehearing at pp. 1-3) On July 11, 2012, the Commission granted rehearing on the issue of the AMI Deployment schedule, and

denied rehearing on all other issues. (Notice of Commission Action, July 12, 2012; *Tr.* at pp. 50-52)

A prehearing conference was held at the Commission's Chicago Office on August 9, 2012, at which the Administrative Law Judge ("ALJ") set a schedule for the instant docket. (*Tr.* at 5-6) On October 3, 2012, pursuant to the schedule, ComEd duly filed Direct Testimony on Rehearing, including a Revised AMI Deployment Plan ("Revised Plan") and Updated Cost Benefit Analysis, of the following witnesses: Ross C. Hemphill, Richard O'Toole, and Andrew L. Trump. (ComEd Ex. 15.01 16.0 and 17.01 with attached exhibits and schedules) Shortly before 3:00 PM on October 23, 2012, the same day that Staff and Intervener Direct Testimony on Rehearing was due to be filed, ComEd filed an Errata to its Direct Testimony on Rehearing that substantially amended its October 3, 2012 filing by removing references to ComEd's finances. (ComEd Exs. 15.0 REV, 16.0 REV, 17.0-17.01 REV with attached exhibits and schedules; AG Emergency Motion for an Extension of Time at 1, October 24, 2012)) On October 25, 2012, the following Staff witnesses filed Direct Testimony on Rehearing: Alan Pregozen, David Brightwell, and Eric Schlaf. (Staff Ex. 3.0, 4.0 and 5.0 with attached exhibits and schedules) On October 29, 2012, ComEd filed Rebuttal Testimony on Rehearing of Ross C. Hemphill, Richard O'Toole, Andrew L. Trump, and Joseph R. Trpik, Jr. (ComEd. Ex. 18.0, 19.0, 20.0 and 21.0, with attached exhibits and schedules)

An evidentiary hearing was held in this matter on November 1, 2012, and testimony was taken and evidence adduced. (*Tr.* at 5-109) At the conclusion of the hearing, the record was marked "Heard and Taken". (*Tr.* at 109) Staff, ComEd, the AG and AARP (together, "AG/AARP") and CUB and ELPC (together, "CUB/ELPC") filed Initial Briefs on Rehearing ("IBs") and Reply Briefs on Rehearing ("RBs").

## **II. LEGAL STANDARD**

### **A. REQUIREMENTS OF SECTION 16-108.6 OF THE ACT**

With respect to the issue on rehearing of ComEd's AMI Deployment Schedule,<sup>1</sup> Section 16-108.6(c) of the Act requires that:

The AMI Plan Shall provide for investment over a 10-year period that is sufficient to implement the AMI Plan across its entire service territory in a manner that is consistent with subsection (b) of Section 16-108.5 of this Act.  
(220 ILCS 5/16-108.6(c))

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<sup>1</sup> In addition to the requirements addressed here, Section 16-108.6 describes a number of other requirements applicable to ComEd's AMI Plan, including a vision statement, strategy statement, annual milestones and metrics, consumer education plan, consistency with the standards of the National Institute of Standard and Technology and privacy protections for consumers. (See 220 ILCS 5/16-108.6(c) & (d)) Because these other requirements are not at issue on rehearing, they are not addressed here.

In addition, Section 16-108.6(c) provides that:

After notice and hearing, the Commission shall, within 60 days of the filing of an AMI Plan, issue its order approving, or approving with modification, the AMI Plan if the Commission...finds that the implementation of the AMI Plan will be cost-beneficial...”  
(*Id.*)

Section 16-108.6(b) further defines cost-beneficial to mean:

...a determination that the benefits of a participating utility's Smart Grid AMI Deployment Plan exceed the costs of the Smart Grid AMI Deployment Plan as initially filed with the Commission or as subsequently modified by the Commission. This standard is met if the present value of the total benefits of the Smart Grid AMI Deployment Plan exceeds the present value of the total costs of the Smart Grid AMI Deployment Plan. The total cost shall include all utility costs reasonably associated with the Smart Grid AMI Deployment Plan. The total benefits shall include the sum of avoided electricity costs, including avoided utility operational costs, avoided consumer power, capacity, and energy costs, and avoided societal costs associated with the production and consumption of electricity, as well as other societal benefits, including the greater integration of renewable and distributed power resources, reductions in the emissions of harmful pollutants and associated avoided health-related costs, other benefits associated with energy efficiency measures, demand-response activities, and the enabling of greater penetration of alternative fuel vehicles.  
(220 ILCS 5/16-108.6(b))

## **B. BURDEN AND STANDARD OF PROOF**

ComEd bears the burden of proof in this proceeding. Section 16-108(c) specifically requires that “...*each participating utility* shall file a Smart Grid Advanced Metering Infrastructure Deployment Plan (“AMI Plan”) with the Commission...” and further outlines what the utility must include in its Plan. (220 ILCS 5/16-108.6(c)) (emphasis added)

Even where a statute does not specifically place any burden of proof, courts have uniformly imposed on administrative agencies the common-law rule that the party seeking relief has the burden of proof. *Scott v. Dept. of Commerce and Community Affairs*, 84 Ill. 2d 42, 53 (1981).

The term “burden of proof” includes the burden of going forward with the evidence, and the burden of persuading the trier of fact. *People v. Ziltz*, 98 Ill. 2d 38, 43 (1983). The burden of persuading the trier of fact does not shift throughout the proceeding, but remains with the party seeking relief. *Ambrose v. Thornton Twp. School Trustees*, 274 Ill. App. 3d 676, 680 (1st Dist 1995), *app. den.*, 164 Ill. 2d 557 (1995). It is clear, therefore, that ComEd, as petitioner here, bears the burden of proof.

Section 10-15 of the Illinois Administrative Procedure Act provides that “[u]nless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.” 5 ILCS 100/10-15. The Commission has observed that the Administrative Procedure Act standard is: “the appropriate standard in all contested cases” before the Commission. (Order at 4, *Illinois Commerce Commission on its Own Motion: Amendment of 83 Ill. Admin. Code Part 200*, ICC Docket No. 92-0024 (April 29, 1992). Accordingly, the standard of proof to be applied is the preponderance of the evidence standard.

### III. COMED’S REVISED AMI PLAN AND DEPLOYMENT SCHEDULE

#### A. Description of ComEd’s Revised AMI Plan

Under ComEd’s Revised AMI Plan, the original meter deployment schedule has been delayed by approximately three years, the budget for AMI Capital Investment has been reduced from \$52.2 million to \$20 million, a number of business design processes have been extended; the completion of contract negotiations has been delayed; a number of support activities have been deferred; and, the scheduled start date for the replacement of the Meter Data Management System (“MDMS”) has been delayed until September 2013. (Staff Ex. 4.0 at 2; ComEd Ex. 16.0 REV at 2-4)

The most significant revision contained in the Revised Plan is to the meter deployment schedule. The original meter deployment plan called for deployment to begin in September 2012 and conclude in 2021. (Staff Ex. 4.0 at 2; ComEd Ex. 16.0 REV at 2, 8) Under the Revised Plan there will be zero meter deployment during 2012-2014, with meter deployment to start in January 2015 and conclude in 2021. (Staff Ex. 4.0 at 2-3; ComEd Ex. 16.0 REV at 8) As shown in the table<sup>2</sup> below, under the Revised Plan ComEd more than 1 million fewer meters would be deployed by 2014 as compared to the original Plan. ComEd would engage in comparatively large deployment during years 2016-2019, thereby catching up with the original deployment by approximately 2020. The row marked “Cumulative Difference” shows the difference between the total number of meters deployed under the Original Plan and the Revised Plan.

**Number of Meters Deployed Under ComEd’s Original Plan and Revised Plan (number of meters in thousands)**

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2121	Total
Original Plan	131	385	536	531	460	497	448	401	351	289	4,029

<sup>2</sup> Data from Table 2-1, ComEd Ex. 17.01 REV at 3.

<b>Revised Plan</b>	0	0	0	500	846	846	700	485	377	275	4,029
<b>Cumulative Difference</b>	131	516	1,052	1,083	697	348	96	12	-14	0	0

ComEd witness Andrew L. Trump estimates that this delay in meter deployment would reduce net benefits to consumers by approximately 15% compared to the original Plan. (Staff Ex. 4.0 at 4; ComEd Ex. 17.0 REV at 2) On a net present value basis, using a discount rate of 3.087%, Mr. Trump estimates that net benefits derived from the revised deployment schedule would be reduced by \$187 million compared to the benefits derived from the original deployment schedule. (Staff Ex. 4.0 at 5; ComEd Exhibit 17.01 REV at 5)

## **B. ComEd's Revised AMI Plan and Section 16-108.6 Requirements**

As it pertains to the issue on rehearing of ComEd's deployment schedule, Section 16-108.6(c) of the Act requires that ComEd's Revised Plan must: (1) deploy AMI across its entire service territory over 10 years in a manner consistent with Section 16-108.5(b) of the Act, and (2) be cost-beneficial as that term is defined by Section 16-108.6(b) of the Act. (220 ILCS 5/16-108.6(b) & (c); Staff Ex. 4.0 at 4) Staff concludes that ComEd's Revised Plan meets these requirements. (Staff Ex. 4.0 at 4; Staff Ex. 5.0 at 3)

Section 16-108.5(b)(1) of the Act provides, in pertinent part, that a non-combination utility shall begin its 10-year investment period in Smart Grid electric system upgrades:

...no later than 180 days after a participating utility other than a combination utility files a performance-based formula rate tariff pursuant to subsection (c) of this Section, or, beginning no later than January 1, 2012 if such utility files such performance-based formula rate tariff within 14 days of the effective date of this amendatory Act of the 97th General Assembly...

(220 ILCS 5/16-108.5(b)(1) & (b)(1)(B))

The effective date of Section 16-108.6 of the Act was October 26, 2011. ComEd filed a performance-based formula rate in Docket No. 11-0721 on November 8, 2011, or 13 days after the effective date of the Act; thus the 10-year period for ComEd's AMI investments is January 1, 2012 to January 1, 2022. ComEd's Revised Plan indicates that AMI deployment would be completed by December 2021, essentially the same completion date as the Original Plan. (Staff Ex. 4.0 at 4; ComEd Ex. 16.0 REV at 8). Therefore, Staff concludes that ComEd's Revised Plan meets the 10-year deployment requirement of Section 16-108.6(c) of the Act. (Staff Ex. 4.0 at 4)

To assess whether ComEd's Revised Plan is cost-beneficial, Staff witness Dr. David Brightwell analyzed the discount rate at which the Revised Plan would no longer be cost-beneficial. (Staff Ex. 5.0 at 2-3) In Dr. Brightwell's opinion, the discount rate is

likely the most subjective element with a significant impact on the cost-benefit analysis, and it is therefore appropriate to determine the threshold at which the discount rate adversely affects the cost effectiveness of the Revised Plan. (*Id.* at 3) Further, the cost benefit methodology used by ComEd in its Revised Plan remained substantially the same as that used in its Original Plan, with variations driven by modifications to the AMI deployment schedule reflective of changes in the timing of costs and benefits incurred rather than to the underlying cost benefit methodology. (*Id.* at 4) Accordingly, an examination of the sensitivity of the model to changes in the discount rate provides reasonable guidance as to whether the changes to the deployment schedule, when considered in conjunction with the previously accepted cost benefit methodology, would have the effect of changing the Revised Plan from one that is cost beneficial to one that is not. (*Id.*)

The results of Dr. Brightwell's analysis indicate that the Revised Plan was cost-beneficial with any discount rate lower than 19.3%. (*Id.* at 3) Based on this finding, Staff concludes that the Revised Plan meets the definition of cost-beneficial as that term is defined by Section 16-108.6(b) of the Act. (*Id.*)

### **C. Should ComEd's Revised AMI Plan be Approved?**

#### **1. Relevant Legal Issues**

ComEd contends that approval of its Revised Plan is governed solely by the standards set forth in Section 16-108.6 of the Act, i.e. whether the Revised Plan is cost-beneficial and deploys AMI meters on a schedule permitted by EIMA. (ComEd Ex. 18.0 at 1-3; ComEd Ex. 18.01; *Tr.* at 15-17) As such, ComEd argues that any factors other than those standards, including the Company's finances and operational considerations, regardless of whether they are relevant to ComEd's revised schedule, are not at issue in this rehearing. (ComEd Ex. 18.0 at 3; ComEd Ex. 18.01; *Tr.* at 15-17; ComEd IB at 13-15) Thus, ComEd, having obtained rehearing by arguing that its circumstances were so changed that it was rendered unable to make the necessary investments, now contends that those changed circumstances are irrelevant to the proceeding, a view the Commission may or may not see fit to endorse. Further, ComEd appears to have concluded that the Commission lacks authority under Section 16-108.6 of the Act to modify ComEd's revised AMI Plan. The Commission may wish to consider this argument in light of the statutory provision allowing it to approve an AMI plan "with modification." (220 ILCS 5/16-108.6(c))

ComEd's position is that the Revised Plan should be addressed in the same manner as its Original Plan, i.e. solely with reference to the provisions in Section 16-108.6 of the Act. (ComEd Ex. 18.0 at 3; ComEd. Ex. 18.01) While this position is not without merit in certain respects, it does not take into account the fact that the Commission may seek to determine in this rehearing not whether an entirely new AMI Plan should be approved, but rather whether the deployment schedule of an already approved AMI Plan should be revised. (Notice of Commission Action, July 12, 2012; *Tr.* at 50-52, July 11, 2012; Order at 64-65, Docket No. 12-0298, June 22, 2012) In short, the issues may well be whether revisions to the deployment schedule should be approved and if so, what those revisions should be. The Commission may wish to



consider any factors that might affect the Commission's determination on these issues, including financial and operational considerations.

The premise of ComEd's argument is that "[a] rehearing is not an appeal of the original order or judgment and does not require the party granted rehearing to again demonstrate that the original order or judgment was deficient." (*Id.* at 14) Instead, ComEd asserts, "...it is simply a new hearing conducted in accordance with the same legal standards that applied in the original hearing." (*Id.*) This argument is entirely without merit. Section 10-113 of the Public Utilities Act ("Act") (Rescission or Hearing of Order) provides, in pertinent part:

If, after such rehearing and consideration of all of the facts, including those arising since the making of the rule, regulation, order or decision, the Commission shall be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may rescind, alter or amend the same.

(220 ILCS 5/10-113(a))

As the above language indicates, the scope of any rehearing clearly extends to consideration of all of the facts, including those arising since the making of the order that is the subject of the rehearing. Further, a decision to alter or amend any part of the order that is the subject of rehearing is clearly to be based on the Commission's consideration of those facts. The Commission is tasked with determining what, if any, change to the AMI deployment schedule that it approved in its June 22, 2012 Order is warranted. (Notice of Commission Action, July 12, 2012; *Tr.* at 50-52, July 11, 2012; Order at 64-65, Docket No. 12-0298, June 22, 2012; Notice of Administrative Law Judge's Ruling, October 25, 2012) The sole factual basis put forth for altering the deployment schedule was ComEd's changed financial circumstances. (ComEd IB at 2) Therefore, any decision by the Commission to alter or amend the deployment schedule must be based on a consideration of those financial circumstances. ComEd's argument that the Commission's decision must somehow be made in a vacuum, void of any consideration of the primary factual basis that is directly relevant to that decision, is both illogical and directly contrary to the Act

ComEd naturally, given the circumstances, attempts to narrow the scope of this proceeding. Having applied for rehearing based solely on the alleged financial impact of the Commission's May 29, 2012 Order in the ComEd formula rate case proceeding in Docket No. 11-0721, ComEd now seeks to limit or prevent consideration of such factors. (Application for Rehearing at pp. 1-3; ComEd Ex. 18.0 at 3; ComEd. Ex. 18.01) However, in its June 22, 2012 Order in this proceeding, the Commission appears to have sought a more expansive record, suggesting that ComEd was required to address financial considerations as part of the rehearing, in the following passage:

After the Commission entered its Order in Docket No. 11-0721 (ComEd's filing under Section 16-108.5 of the Act), ComEd filed a Motion to Stay the Commission's Order in the present docket pending rehearing *on the issue of ComEd's deployment timetable*. The Commission will address ComEd's Motion to Stay separately, but notes that *any claim by ComEd that its original*

*deployment schedule cannot be sustained given financing challenges created through the Commission's Order in Docket No. 11-0721 should be supported by evidence identifying exactly what those challenges are (for instance, what additional capital is now required, for what term, and at what expected rate), what specific assumptions underlying ComEd's original deployment schedule are no longer valid, and what specific impacts that any such challenges would have on its original deployment schedule.* As evidenced by ComEd's motion, the Commission expects that ComEd will request rehearing *on this topic*, and the Commission strongly encourages any rehearing application to make such identifications with particularity.

(Order at 13-14, Docket No. 12-0298, June 22, 2012) (emphasis added))

Further, as the ALJ has made clear, "[t]he scope of this proceeding is defined by the Company's Petition for Rehearing and the ALJ's Memo to the Commission, dated July 10, 2012, and not the Company's Direct Testimony." (Notice of Administrative Law Judge's Ruling, October 25, 2012)

Moreover, ComEd's position appears not to take into account the Commission's authority to modify ComEd's AMI Plan. It is axiomatic that statutes should be construed so that no term is rendered superfluous or meaningless. *Stroger v. Regional Transportation Authority*, 201 Ill. 2d 508, 523; 778 N.E. 2d 683, 693 (2002). Section 16-108.6(c) provides, in pertinent part:

After notice and hearing, the Commission shall, within 60 days of the filing of an AMI Plan, issue its order approving, *or approving with modification*, the AMI Plan if the Commission...finds that the implementation of the AMI Plan will be cost-beneficial..."

(220 ILCS 5/16-108.6(c) (emphasis added))

ComEd's argument that the only issue on rehearing is whether its Revised Plan should be approved pursuant to the statutory criteria contained in Section 16-108.6 of the Act, regardless of any other factor, is at its essence absolute; i.e. if its Revised Plan meets the minimum requirements of Section 16-108.6, then it must be approved. (ComEd Ex. 18.0 at 3-4; ComEd. Ex. 18.01; *Tr.* at 15-17) This position renders the statutory language "or approving with modification," superfluous. It is, in fact, the same argument ComEd made previously, and the Commission already rejected, in this proceeding. (see Order at 62, 64, 14, fn1, Docket No. 12-0298, June 22, 2012)

ComEd's argument runs contrary to the plain language of Section 10-113(a) of the Act. (220 ILCS 5/10-113(a)) Further, ComEd's position inherently limits the Commission's authority to modify the AMI Plan under Section 16-108.6(c) of the Act, in violation of well-established principles of statutory construction. (Staff IB at 11) Finally, it is readily apparent that both the Commission and the ALJ envisioned a much wider scope in this rehearing than ComEd's position would entail, specifically one that encompasses consideration of the Company's finances. (*Id.* at 10-11) Accordingly, ComEd's attempt to artificially narrow the scope of this rehearing should be rejected.

## 2. ComEd's Finances

- i. There is No Evidence that the Commission Orders in Docket No. 11-0721 Prevent ComEd From Deploying AMI Meters Sooner than 2015.

ComEd's July 6, 2012 Verified Application for Rehearing ("Application") and its accompanying Affidavit by ComEd CFO and Treasurer Joseph Trpik ("Trpik Affidavit") indicate that financial issues played a significant role in the Company's decision to seek rehearing.<sup>3</sup> In its Application, ComEd attributes its decision to delay AML deployment to the revenue shortfall resulting from the Commission's Orders in Docket No. 11-0721 (ComEd Verified Application for Rehearing at 1-2). In its Affidavit, ComEd asserts "future revenues and cash flow resulting from the 11-0721 Order have adversely impacted the investments that ComEd can make in EIMA programs including, but not limited to, AML." (Trpik Affidavit, ¶3) In Mr. Trpik's rebuttal testimony, he states that as matters currently stand, "ComEd cannot recover its prudent and reasonable costs" (ComEd Ex. 21.0 at 1) and "cannot proceed with the investment in EIMA as originally planned." (Id. at 5) He further avers that the Commission's Orders in Docket No. 11-0721 created added uncertainty regarding cost recovery. (*Id.* at 3-4) While Staff agrees that ComEd did not prevail on all cost-recovery issues in the Commission's Orders in Docket No. 11-0721, the record does not show this outcome reduced ComEd's financial resources to a degree that ComEd is precluded from implementing its original AML deployment plan. Moreover, the record does not show that the Commission's Orders in Docket No. 11-0721 created added uncertainty regarding cost recovery.

- ## ii. Credit Rating

Staff has shown that subsequent to the Commission's Orders in Docket No. 11-0721, ComEd maintained an investment grade credit rating with a "Stable" outlook and no negative warnings for a potential credit rating downgrade. (Staff Ex. 3.0 at 4) In other words, the credit rating agencies did not regard the Commission's Orders in Docket No. 11-0721 to be detrimental to ComEd's credit quality to a degree that endangers ComEd's credit ratings.

ComEd's own analysis that it presented to credit rating agencies in July 2012 indicate that even under the \*\*\* BEGIN CONF XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XX  
XX  
XX  
XX  
XX. END  
CONF \*\*\* (Staff Ex. 3.0 at 4-6) That ComEd assessment was prepared and submitted before the Commission issued its Order on Rehearing in Docket No. 11-0721 ("Order on

<sup>3</sup> Notice of Administrative Law Judge’s Ruling, October 25, 2012: “The scope of this proceeding is defined by the Company’s Petition for Rehearing and the ALJ’s Memo to the Commission, dated July 10, 2012, and not the Company’s Direct Testimony.”

Rehearing”) wherein it authorized full recovery of ComEd’s pension asset issue. ComEd’s own analysis estimates the impact of that favorable decision alone adds \*\*\* BEGIN CONF XX END CONF \*\*\* to the Company’s net income for the years 2012 through 2016, respectively. (*Id.*, Attachment B, at 9, line 14) In other words, ComEd’s analysis presented to the credit rating agencies indicates the Commission’s Orders in Docket No. 11-0721 did not endanger ComEd’s credit ratings and, thus, did not significantly impair its ability to raise capital.

### iii. Income Available to ComEd's Common Shareholders

The record evidence indicates that after taking into account the Commission's Order on Rehearing, ComEd estimates that its income (after taxes) available to common shareholders are: \*\*\* BEGIN CONF XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX END CONF \*\*\*for the years 2012 through 2016, respectively. (*Id.*, Attachment B, at 3, line 38) Compared to its "base case" (i.e., the revenue requirement it asked the Commission to approve) this post-Order on Rehearing income available to common shareholders estimates, by ComEd's own analysis, \*\*\* BEGIN CONF XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXX END CONF \*\*\* for the years 2012 through 2016, respectively. (*Id.*, Attachment B, at 4, line 19) These numbers provide a truer perspective to the Company's claim that it will experience a \$100 million annual revenue "shortfall" from the Order on Rehearing. (ComEd Ex. 21.0 at 3) It is earnings, not revenues, that represent the "bottom line" effect of the Order on Rehearing on ComEd's ability to finance AMI deployment. \*\*\* BEGIN CONF XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX<sup>4</sup> END CONF \*\*\*

Further, a comparison of ComEd's estimates of its income available to common shareholders post-Order on Rehearing against its estimates of capital investments under its original deployment plan suggests ample financial ability to absorb the expenditures of the original plan. As shown in the table below, ComEd's own estimates of income available to shareholders (largely Exelon) after taking into account the Order on Rehearing **far exceed** the amounts it would have expended for its AMI capital investments under the original AMI deployment plan approved by the Commission.

	2012	2013	2014	2015	2016
<b>ComEd Income Available to Shareholders</b> ( <i>Post-Docket No. 11-0721 10/3/12 Rate Order</i> ) <sup>5</sup>	*** BEGIN CONF XXX XXXXX	XXXXXXXX	XXXXXXXX	XXXXXXXX	XXXXXXXX END CONF***

<sup>4</sup> Staff Ex. 3.0, Attachment A, at 3, 5, 8, 10, 13 and 15.

<sup>5</sup> Staff Ex. 3.0 on Rehearing, Attachment B, at 3, line 38.

<b>Original AMI Plan Approved by ICC</b> ( <i>capital investment outflows</i> ) <sup>6</sup>	\$66.1 million	\$112.8 million	\$119.9 million	\$131.1 million	\$92 million
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iv. Funds Flow From Operations

A comparison of ComEd's funds flow from operations<sup>7</sup> ("FFO") to ComEd's capital expenditures ("CapEx") under its base case (i.e., ComEd gets everything it asked for in Docket No. 11-0721) and after the issuance of the Order on Rehearing assuming no change to its capital expenditures is also revealing as shown in the table below:<sup>8</sup>

	2012	2013	2014	2015	2016
ComEd's Base Case					
ComEd S&P FFO (in \$ millions)	*** BEGIN CONF XXX	XXXXXX	XXXXXX	XXXXXX	XXXXXX
ComEd CapEx (in \$ millions)	XXXXXX	XXXXXX	XXXXXX	XXXXXX	XXXXXX
S&P FFO/CapEx	XXX	XXX	XXX	XXX	XXX
Post- Order on Rehearing (No Reduction in Capital Expenditures)					
ComEd S&P FFO (in \$ millions)	XXXX	XXX	XXXX	XXXX	XXXX
ComEd CapEx (in \$ millions)	XXXX	XXXX	XXXX	XXXX	XXXX
S&P FFO/CapEx	XXX	XXX	XXX	XXX	XXX END CONF***

[illegible]

<sup>6</sup> ICC Staff Cross Ex. 1.0 (ComEd response to Data Request AG 6.03).

<sup>7</sup> FFO is defined by S&P as net income from continuing operations plus depreciation, amortization, deferred income taxes, and other noncash items. It is a key component of the ratings agencies' financial benchmark ratios. Staff Ex. 3.0, p. 2 and 4.

<sup>8</sup> Values for ComEd S&P FFO and ComEd CapEx in both scenarios are from Staff Ex. 3.0 on Rehearing, Attachment B, at 12. S&P FFO/ CapEx values are calculated using the two aforementioned variables.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX. END CONF \*\*\*<sup>9</sup> (See Staff Ex. 3.0 On Rehearing, Attachment B Confidential, at 15.)

v. Uncertainty

ComEd provided no support for its unsubstantiated claim that the Commission's Orders in Docket No. 11-0721 created uncertainty for cost recovery. The fact that ComEd did not prevail on all their issues in Docket No. 11-0721 does not mean that the Commission removed or reduced the certainty provided by EIMA. The Commission's Orders have now set the formula rate protocols, albeit not with ComEd's preferred method of calculating the interest rate and rate base for reconciliations. Going forward, ComEd's actual costs will be recovered dollar for dollar in future formula rate cases providing it with greater certainty than it did prior to the issuance of the Orders in Docket No. 11-0721.

vi. ComEd's Revenue Shortfall Claims are Unsupported and Factually Inaccurate

ComEd effectively alleges that its ostensible \$100 million *revenue shortfall* is a direct result of the Commission's Order on Rehearing in Docket No. 11-0721 because it did not interpret EIMA "in a manner financially consistent with the interpretation that was subsequently and overwhelmingly confirmed by the Illinois House of Representatives in House Resolution 1157." (ComEd IB at 11) It is the Company's earnings and not its revenues that determine its ability to undertake the original deployment plan. (Staff IB at 14) Thus, this allegation needs to be viewed with reference to the facts in this record.

The referenced House Resolution (“HR 1157”) dealt with three rate issues that formed the scope of the Commission’s Order on Rehearing in Docket No. 11-0721. ComEd did not prevail on two of the three issues (i.e., the interest rate and rate base used for reconciliation or the “true-up”). ComEd assessed the financial impact of those decisions in its response to Staff Data Request FIN 1.01, Attach 2. (Staff Ex. 3.0, Attachment B at 4) In contrast to ComEd’s assertion that it would incur a \$100 million annual shortfall from the loss of those two issues on rehearing, the Company assessed the annual revenue impact of the Commission’s decision on these two issues as:

\*\*\*BEGIN CONF XX  
XXXXXXXXXXXXXXXXXXXXXXXXXX END CONF\*\*\* for the years 2013 through 2016,  
respectively. (*Id.* at lines 12 and 13) All of these ComEd estimates indicate an annual “shortfall” that is significantly less than \$100 million. Clearly, none of these facts of record support ComEd’s allegation that it would have \$100 million more revenues annually had the Commission ruled in ComEd’s favor in Docket No. 11-0721 on Rehearing on all three issues.

<sup>9</sup> Of course, this invites the question of the financial propriety of pushing back investment in AMI to a period during which ComEd expects to spend heavily on the RITE line.

Equally egregious is the Company's claim of a "\$500 million shortfall."<sup>10</sup> (ComEd IB at 12) The record demonstrates that this figure includes Commission adjustments to ComEd's revenue requirement that have nothing to do with EIMA generally or HR 1157 specifically. Specifically, ComEd CFO and Treasurer Mr. Trpik testified that the Commission's Orders in Docket No. 11-0721 included traditional ratemaking adjustments not necessarily addressed in EIMA. (*Tr.* at 96-97, 100, November 1, 2012) Nonetheless, ComEd assessed the total financial impact of the two issues on which it did not prevail on rehearing for the years 2012 through 2016 to be\*\*\*BEGIN CONF XXXXXXXX END CONF\*\*\* (i.e., the sum of lines 12 and 13 of Staff Ex. 3.0, Attachment B at 4). This total estimate from data provided by ComEd is significantly less than the \$500 million shortfall it alleges.

Having exposed the inaccuracies underlying the Company's revenue shortfall allegations, it is apparent that the significant difference between the Company's alleged \$100 million annual revenue shortfall and the much lower "shortfall" numbers it provided in this record are the Commission-ordered disallowances (e.g., unreasonable employee bonuses, incentive compensation and perks; assets more properly allocated to ComEd's transmission business; costs already being recovered by the Company from other riders; pass through taxes for which the Company acts only as a collection agent) in its May 29, 2012 Order in Docket No. 11-0721. The Company's Application for Rehearing of those disallowances, however, was denied by the Commission.<sup>11</sup> Therefore, there is no sound basis for the Company to allege a \$100 million annual revenue shortfall when a substantial portion of that "shortfall" reflects requested costs that were not deemed just or reasonable.

vii. Conclusion

Contrary to ComEd's contention, the Commission's Orders in Docket No. 11-0721 are not sufficient cause for delaying AMI deployment to 2015. (Staff IB at 17) The financial data provided by ComEd to both credit rating agencies and in discovery indicate that despite those Orders, ComEd has a healthy projected bottom line that could have absorbed the expenditures it projected under the original AMI deployment plan. (Staff IB at 12-17). Except for the Company's unsupported declaratory statements that it is not recovering its cost of service, the Company did not put forth any evidence on rehearing to support that claim. The limited financial data Staff obtained through discovery indicates that ComEd has no strong financial basis for reducing capital expenditures during 2014. Although FFO is projected to be lower in 2013 than 2012, that decline is not a result of a decline in ComEd's projected earnings from the Order on Rehearing. Thus, while one could argue that capital expenditures in 2013 should be reduced out of an abundance of caution; the financial case does not compel

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<sup>10</sup> The Company appears to have taken its alleged \$100 million annual shortfall and multiplied it by five years.

<sup>11</sup> As Staff understands the Company's position, it has appealed the Commission's October 3, 2012 Order on Rehearing.



this conclusion. Neither ComEd's financial case nor its unsubstantiated claim of increased uncertainty in cost recovery justifies ComEd's unilateral decision to delay its AMI deployment plan to 2015. In short, the record shows that it is not a question of ComEd's financial ability to deploy AMI faster than it proposes, but a question of its willingness to do so.

### **3. Operational Considerations**

ComEd describes a number of operational considerations that it took into account in developing its revised deployment schedule, but it does not identify any of them as causes for the revision to the previously-approved deployment schedule. It is readily apparent that the original deployment schedule approved by the Commission in its June 22 Order is no longer achievable, and that revisions to the deployment schedule are necessary. It is equally apparent that whatever revisions are made to the deployment schedule must account for any applicable operational considerations. After reviewing ComEd's evidence in this proceeding regarding operational considerations, Staff concludes that from an operational perspective ComEd is capable of beginning its deployment in 2013, as opposed to 2015 under its proposed Revised Plan, and of catching up to its original schedule by 2017, as opposed to 2020 under its Revised Plan.

ComEd witness Richard O'Toole states that the new deployment schedule was developed by taking a number of considerations into account, including applicable capital and O&M budgetary constraints, development of a year over year meter installation profile that reflects plausible staffing strategies for meter installers, and replacement of the Meter Data Management System ("MDMS"). (ComEd Ex. 16.0 REV at 6-7) However, the only operational factors that ComEd identifies in its testimony on rehearing as potentially affecting the decision to delay deployment until 2015 are the replacement of the MDMS and possible staffing issues. While considerations such as budgetary constraints and factors such as replacement of the MDMS may identify what ComEd took into account when developing its Revised Schedule, they do not explain why the new schedule is being proposed. Nor do they explain why deployment should be delayed until 2015. ComEd fails to demonstrate in its testimony on rehearing any connection between these operational considerations and the decision to delay deployment until 2015.

Regarding the MDMS schedule, ComEd plans to delay replacement of the MDMS for fifteen months, until September 2013, and take about thirteen months to complete. (ComEd Ex. 16.0 REV at 3) Under the original plan, the replacement process would have begun in approximately June 2012 and been completed in about July 2013. Thus, as replacement of the MDMS would occur under both the original and revised plans, ComEd's decision to delay replacement of the MDMS until September 2013 appears to be a consequence of the decision to delay deployment rather than a cause of it. Likewise, any staffing issues that ComEd may have do not appear to be the cause of the delayed deployment schedule, but rather are a result of ComEd's decision to delay deployment.

Notwithstanding Staff's conclusion that ComEd has failed to demonstrate that operational issues are the primary cause of the Company's decision to delay



deployment, it is readily apparent that the schedule in the Original Plan is no longer achievable, and that revisions to the deployment schedule are necessary. Under the Original Plan, deployment was to begin in September 2012, a date that has obviously passed, and given the timeline of this proceeding, the original schedule must inevitably be delayed by several months. Moreover, ComEd has not to Staff's knowledge taken steps to effectuate the approved schedule. Therefore, it is clear that revisions to the deployment schedule are necessary.

In Staff's opinion, from an operational perspective ComEd is capable of beginning its deployment in 2013, as opposed to 2015 under its proposed Revised Plan, and of catching up to its original schedule by 2017, as opposed to 2020 under its Revised Plan. From an operational perspective, there appears to be no obstacle preventing ComEd from beginning deployment simultaneously with replacement of the MDMS.<sup>12</sup> Staff recognizes that ComEd can only deploy about 270,000 meters during the MDMS replacement period. (ComEd Ex. 19.0 at 2) However, the replacement period would conclude by October 2014, which would provide an extra two months for deployment. Based on information provided by the Company, ComEd should be able to deploy 270,000 meters during the MDMS replacement period and continue replacement throughout 2014, i.e. 2013-2014. (ComEd Ex. 19.0 at 2) Further, once deployment commences, the Revised Plan calls for rapid deployment: 500,000 meters would be deployed during 2015, the first year of deployment, followed by 846,000 in the next two years. (ComEd Ex. 16.0 REV, pp. 8-9) Thus, ComEd is confident in its ability to deploy quickly following replacement of the MDMS. ComEd's proposed Revised Plan suggests that the Company could maintain that pace until it catches up with the original schedule. By adhering to this rapid deployment schedule in combination with the 2013-2014 deployment described above, ComEd would catch up to the original deployment schedule by 2017, as opposed to 2020 under ComEd's Revised Plan.

#### **D. Options and Recommendations**

The Commission is tasked in this rehearing with determining what, if any, change to the AMI deployment schedule that it approved in its June 22, 2012 Order is warranted. (Notice of Commission Action, July 12, 2012; *Tr.* at 50-52, July 11, 2012; Order at 64-65, Docket No. 12-0298, June 22, 2012; Notice of Administrative Law Judge's Ruling, October 25, 2012) In making that determination, the Commission clearly has authority to assess all of the evidence it deems relevant, and to make the modifications it deems necessary, including those that are "...consistent with developing a cost-beneficial Smart Grid, which enhances and enables customers' ability to take advantage of Smart Grid functions." (Order at 64, Docket No. 12-0298, June 22, 2012) ComEd, in turn, has the burden of proof to demonstrate by a preponderance of the evidence that the changes it has proposed to the AMI deployment schedule are in fact warranted. (Staff IB at 4-5)

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<sup>12</sup> ComEd has chosen September 2013 to begin replacement of the MDMS; should MDMS replacement begin earlier, deployment could also be moved up.

Further, Staff notes that the state of the record in this proceeding is less fully developed than might be ideal, in part due to ComEd's decision to attempt to remove financial issues from play in the proceeding. This consideration informs the Staff's recommendation as advanced herein.

In addition, Section 16-108.6(c)(3) requires that an approved plan contain: "a deployment schedule and plan that includes deployment of AMI to all customers for a participating utility other than a combination utility[.]" (220 ILCS 5/16-108.6(c)(3)) Therefore, the Commission's Order on Rehearing must effectively approve some deployment in this proceeding. Three such schedules have been proposed.

Based on these considerations, and on the arguments advanced by the other parties in this proceeding, Staff outlines the following options and its recommendations as follows:

The first option before the Commission is the rejection of ComEd's Revised Plan. CUB/ELPC argue that the Commission should reject ComEd's Revised Plan, and require it to comply with the Approved Plan, the latter being the Plan approved by the Commission in its June 22, 2012 Order. (CUB/ELPC IB at 12-18) CUB/ELPC argue that implementation of the Revised Plan would result in customers realizing significantly fewer benefits than they would under the Approved Plan. (*Id.*) CUB/ELPC further argue that ComEd failed to address in its case-in-chief the financial issues upon which the Commission based its grant of rehearing. (*Id.* at 5-8)

AG/AARP advance the same arguments as CUB/ELPC. (AG/AARP IB at 8-15) AG/AARP further argue that ComEd can argue its case for a revised deployment plan in its April 1, 2013 Report to the Commission. (*Id.* at 15-17)

There is no question that the Approved Plan is the result of a well-developed evidentiary record, which is less true of the other plans advanced in the proceeding. However, as Staff has noted, the Commission should not require ComEd to comply with the Approved Plan for the compelling reason that the Approved Plan is now impossible to implement. (Staff IB at 22) Several critical dates for procurement of technology, deployment of meters, and deployment of staff have irrevocably slipped. (*Id.*) While the Staff concurs with AG/AARP that the April 1, 2013 Report will provide a useful tool to determine what constraints actually exist with respect to implementation of ComEd's AMI Plan, the Staff cannot in good conscience recommend that the Commission adopt an option that is impossible to implement, regardless of how beneficial to customers it might theoretically be. (Staff RB at 10)

The second option before the Commission is the Revised Plan proposed by ComEd. The primary advantage of this plan is that ComEd considers itself capable of implementing it. (Staff IB at 20) ComEd has identified operational and (apparently in the alternative) financial issues that in its view prevent earlier implementation. (*Id.*) The disadvantages of the Revised Plan, however, are significant; apart from being weakly supported by evidence (especially as to the financial need for it in the first place), the Revised Plan results in significantly reduced benefits to customers as a result of delayed deployment. (*Id.* at 20-21) ComEd witness Mr. Trump has estimated that the loss of benefits resulting from the adoption of the Revised Plan in comparison to the Original Plan to be \$187 million. (ComEd Ex. 17.01 REV at 5)

Finally, Staff advanced a proposal that adopts an alternative deployment schedule, as shown in the table below, based on the testimony of Staff witnesses Drs. Eric P. Schlaf and David Brightwell. (Staff IB at 17-20, 21-22)

**Deployment Schedule Under ComEd's Original Plan, ComEd's Revised Plan, and Staff's Alternative Plan (number of meters in thousands)<sup>13</sup>**

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2121	Total
<b>Original Plan</b>	131	385	536	531	460	497	448	401	351	289	4,029
<b>Revised Plan</b>	0	0	0	500	846	846	700	485	377	275	4,029
<b>Staff's Alternative Plan</b>	0	60	250	500	846	846	600	385	300	242	4,029

This alternative schedule has several advantages, including the fact that its implementation is possible, it affords customers greater benefits than ComEd's Revised Plan (if fewer benefits than the Approved Plan), and it has reasonable evidentiary support. (Staff IB at 21-22; Staff RB at 11) Staff recommends that this schedule be adopted.

Staff further recommends that ComEd be directed to explore opportunities to accelerate deployment and to raise any further matters that it believes bear on its ability to implement the schedule that is ultimately approved in this proceeding, and to describe those opportunities and other matters in detail for the Commission's consideration in ComEd's April 1, 2013 AMI Plan progress report to the Commission prescribed by Section 16-108.6(e) of the Act. (220 ILCS 16-108.6(e)).

#### **IV. CONCLUSION**

WHEREFORE, for all of the forgoing reasons, Staff respectfully requests that the Illinois Commerce Commission approve ComEd's Revised AMI Plan with Modifications consistent with Staff's recommendations.

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<sup>13</sup> See Staff Ex. 4.0 at 3 for deployment figures for the Original Plan and Revised Plan.

Respectfully submitted,

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